

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARRYL ORRIN BAKER,
Plaintiff,

FILED

VS.

'06 APR 17 11:50 CIVIL ACTION NO. 05-147E

UNITED STATES OF AMERICA
GOVERNMENT OFFICIALS AT
FCI-MCKEAN, WARDEN, OFFICER
B. WESEMEN, MEDICAL DEPARTMENT

Defendant's

CLERK
U.S. DISTRICT COURT

HONORABLE JUDGE MCCLAUGHLIN
MAGISTRATE JUDGE
SUSAN PARADIS BAXTER

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
TO DIMISS PLAINTIFF'S COMPLAINT, OR IN
THE ALTERNATIVE, FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, DArryl Orrin Baker, ("hereinafter
"PLAINTIFF"), and proceeding **pro-se** and respectfully moves the
Honorable Court to Grant the Plaintiff's Opposition to Defendant's
Motion to Dismiss Plaintiff's Complaint, or in the Alternative
for Summary Judgment, and Deny the United States and Government
Official's Motion for Summary Judgment Pursuant to Rule 12(b)(1)
12(b)(2), 12(b)(6), and Rule 56 of the Federal Rules or Civil
Procedure, for the reasons that follow.

(1) Prusuant to 12(b)(1), the Plaintiff, has
established subject matter jurisdiction, and sovereign immunity
has been waived because the Defendant's Government Officials has
committed a non-deiscretionary act under the Discretionary Function
Exception when they violated the Regulation and Policy set forth

by the Warden at FCI Mckean.

(2) Pursuant to 12(b)(6), the Plaintiff has set forth facts based on documentation, and affidavits, that can be proved that the Government Official committed a non-discretionary act.

(3) Pursuant to Rule 56(c) the Plaintiff has set forth a plethora of genuine material facts to overcome summary judgment.

CONCLUSION

Wherefore, the Plaintiff, respectfully request that this Honorable Court Grant the Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, or in the Alternative, for Summary Judgment and Deny the United States Government Officials Summary Judgment because the Plaintiff has shown that subject matter jurisdiction, has been established , when the Defendant's violated the Warden's Regulation, and Policy, and Plaintiff, has set forth a genuine material facts for this Honorable Court's determination, and judgment.

Respectfully submitted

BY:



Darryl Orrin Baker

(PRO-SE)

Reg. No.# 19613-039

Federal Prison Camp

P.O. Box 2000

Lewisburg, PA.

17837

EXECUTED: APRIL 10, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of within Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, or in the Alternative, for summary Judgment was sent United States First Class Mail on this day April 10, 2006, to and upon the following:

Paul E. Skirtich
Assistant United States Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA. 15219

Respectfully submitted

BY: Darryl Orzin Baker
Darryl Orzin Baker
(PRO-SE)
Reg. No. # 19613-309
Federal Prison Camp
P.O. Box 2000
Lewisburg, PA.
17837

EXECUTED: APRIL 10, 2006

April 10, 2006

Clerk of the Court
United States District Court
Western District of Pennsylvania
Honorable Judge McLaughlin
Honorable Susan Paradise Baxter
U.S. Courthouse, Room A250
17 South park Row
Erie, PA. 16501

RE: United States of America v. Darryl Orrin Baker
Civil Action No. 05-147E

Dear Clerk of Court:

Please find inside the Plaintiff's Opposition to United States Government Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

Also, the Plaintiff acknowledge that, the Plaintiff has sent a true and exact copy of the same to the United States Attorney Paul E. Skirtich, at 700 Grant Street, Suite 4000 Pittsburgh, PA. 15219.

Respectfully submitted

BY: Darryl Orrin Baker
Darryl Orrin Baker
(PRO-SE)
Reg. No.# 19613-039
Federal Prison Camp
P.O. Box 2000
Lewisburg, PA.
17837

Encl:
cc: AUSA PAUL E. SKIRTICH